

RECORDATION NO. 23255-C FILED

JAN 31 '01 10-39 AM

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SURFACE TRANSPORTATION BOARD

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ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
URBAN A. LESTER

January 30, 2001

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Rail Car Use Agreement, dated as of February 19, 1999, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Equipment Lease and Collateral Assignment which were previously filed with the Board under Recordation Numbers 23255 and 23255-A.

The names and addresses of the parties to the enclosed document are:

Lessor:	Kasgro Leasing, LLC (f/k/a OPM Services, Inc.) 320 East Cherry Street New Castle, PA 16102
Lessee:	Nooter/Eriksen, Inc. 5000 Cedar Plaza Parkway St. Louis, MO 63128

A description of the railroad equipment covered by the enclosed schedule is:

two (2) railcars LNAL 70936 and 70937

Mr. Vernon A. Williams
January 30, 2001
Page Two

A short summary of the schedule to appear in the index follows:

Rail Car Use Agreement between Kasgro Leasing, LLC, Lessor, and
Nooter/Eriksen, Inc., Lessee covering two (2) railcars LNAL 70936 and
70937.

Also enclosed is a check in the amount of \$27.00 payable to the order of the
Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a stylized flourish at the end.

Robert W. Alvord

RWA/anm
Enclosures

JAN 31 '01 10-39 AM

RAIL CAR USE AGREEMENT

SURFACE TRANSPORTATION BOARD

THIS RAIL CAR USE AGREEMENT ("Agreement") is made as of FEB. 19, 1999, 1999, between OPM SERVICES, INC. ("OPM"), and NOOTER/ERIKSEN, INC. ("Nooter").

RECITALS:

WHEREAS, OPM is the manager of a fleet of heavy duty railroad marked 8-axle FM flat cars ("Rail Cars") for shipping goods and material;

WHEREAS, Nooter and its affiliate Nooter Corporation have a need for a certain number of Rail Cars to be available primarily for their exclusive use for prompt delivery of goods and equipment to their customers in a timely fashion; and

WHEREAS, the parties hereto intend to provide for the use of Rail Cars in accordance with the terms and provisions of this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties agree as follows:

1. Term.

(a) Unless earlier terminated as provided herein, the term of this Agreement ("Term") shall be three years, commencing on the date hereof. Thereafter, the Agreement may be extended by Nooter for (and the Term shall include) two successive one-year terms by giving six months prior written notice of extension to OPM.

(b) In the event the option to extend under Section 1(a) is not exercised by Nooter for two successive one-year extensions, then OPM shall serve as Nooter's primary source of heavy duty flat cars for the two-year period following termination by giving OPM reasonable notice and the first opportunity to supply such cars when needed by Nooter.

(c) Either party may terminate this Agreement upon the material breach of this Agreement by the other party, provided the breaching party shall have a 60-day period to cure such breach on notice of the same by the non-breaching party.

2. Use of Rail Cars.

(a) Nooter shall cause the Rail Cars to be used (each use, a "Use") in the aggregate a minimum of 95 Uses for the 12-month period beginning January 1, 1999 and 105 Uses for each subsequent year (the "Yearly Minimum"). Upon inception of this Agreement, OPM shall provide availability of ten (10) Rail Cars increasing to fifteen (15) Rail Cars by April 1, 1999 and thereafter; provided, further, that OPM may initially make 60' Rail Cars available for Nooter's use for the period ending June 30, 1999, thereafter all Rail Cars shall be 70' Rail Cars.

(b) In the event Nooter's aggregate Uses for any 12-month period of the Term is less than the Yearly Minimum, then Nooter shall pay OPM an amount which equals the Yearly Minimum less Nooter's aggregate Uses for such 12-month period, multiplied by the sum of: the tariff use charge plus the average per load origin and destination detention of all Rail Cars for such 12-month period. Uses by Nooter Corporation shall be credited toward the Yearly Minimum.

(c) By Nooter's written notice to OPM, Rail Cars may be released to OPM, and OPM shall use reasonable efforts to re-market released Rail Cars. Nooter shall receive credit towards the applicable Yearly Minimum for any loadings of such released Rail Cars.

(d) Nooter may increase the number of Rail Cars subject to this Agreement upon 60 days prior written notice to OPM.

(e) Upon adequate prior notice to Nooter and with the permission of Nooter, OPM may substitute identical Rail Cars for use by Nooter.

3. **Payment for Use.** As consideration for providing Rail Cars for Nooter's use as provided herein, OPM shall be entitled to receive payment in amount(s) and payable net 30 days and in accordance with Item 683 of Railway Tariff RPS 6740F, as attached hereto and incorporated by reference herein, as may be amended from time to time.

4. **Miscellaneous.**

(a) **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of delivery personally, (ii) on deposit in the United States mail, postage prepaid by registered or certified mail, return receipt requested, or (iii) on delivery to an overnight courier, costs prepaid, or next day delivery, to the appropriate party at the following address (or at such other address as shall hereafter be designated by one party to the other party by notice given in accordance with this Section):

To OPM: OPM Services, Inc.
1000 W. Ormsby Avenue, Suite 215
Louisville, KY 40210
Attn: Harry Ketterman
cc: Chuck Woods

To Nooter: Nooter/Eriksen, Inc.
5000 Cedar Plaza Parkway
St. Louis, MO 63128
Attn: Jon Dulle

(b) **Severability; Waiver.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid or

unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. Failure of either party to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

(c) Benefit Assignment. The covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the parties and their permitted successors and assigns. Either party may assign its interest hereunder upon the prior written consent of the other party.

(d) Further Assurances. Each party shall execute such instruments and take such other action as shall be reasonably requested by the other in order to effect the transactions contemplated herein.

(e) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the substantive laws of the Commonwealth of Kentucky.

(f) Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and completely supersedes all prior agreements between the parties, whether oral or written. All other agreements with respect to the subject matter hereof between the parties, whether oral or written, are merged herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OPM SERVICES, INC.

By: _____

Title: _____

NOOTER/ERIKSEN, INC.

By: _____

Title: _____

Mgr. of Procurement & Transportation

ADDENDUM #1

RAIL CAR USE AGREEMENT DATED FEB. 19, 1999
Between OPM Services, Inc. & Nooter/Eriksen, Inc.

Item No. 2 of Original Agreement - Use of Rail Cars.

Add - (b) An additional 5 cars are to be added to this agreement effective September 1, 1999 for a term of 3 years subject to all conditions of the original agreement. These five cars will add 35 uses to the minimum yearly uses (11 uses for the balance of 1999 and 35 for each additional 12 month period) For cars furnished above the fifteen prior to the start date of this addendum, Nooter/Eriksen will be given credit for such uses toward the yearly minimum.

With the addition of these 5 cars the minimum yearly uses are as follows:

1999 — 106 total uses
2000 — 140 total uses
2001 — 140 total uses
2002 — Will be prorated depending on the number of cars Nooter/Eriksen keeps under this agreement.

All other terms and conditions remain the same.

OPM RAIL SERVICES, INC.

By: [Signature]

Title: President

Date: June 24, 1999

NOOTER/ERIKSEN, INC.

By: [Signature]

Title: MGR. PURCH. & TRANSPORTATION

Date: 7-1-99

ACKNOWLEDGMENT, CONSENT AND RELEASE

Pursuant to the terms of that certain Rail Car Use Agreement dated February 19, 1999 (the "Agreement") between Nooter/Eriksen, Inc. ("Nooter") and OPM Services, Inc. ("OPM Services"), Nooter, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, does hereby acknowledge and fully and completely authorize, approve and consent to each of the following: (i) the execution, delivery and performance by OPM Services, as assignor, and Kasgro Leasing, LLC, a Pennsylvania limited liability company ("Kasgro Leasing"), as assignee, of an Assignment and Assumption Agreement ("Assignment") pursuant to which OPM Services will sell, assign, transfer and convey to Kasgro Leasing all of its right, title and interest in and to the Agreement and Kasgro Leasing will accept, assume and agree to perform and be bound by all of the obligations, responsibilities and covenants arising thereunder, (ii) the transfer and conveyance by OPM Flats, Inc. to Kasgro Leasing of its entire general partner interest in and to Power Flats, Ltd., a Kentucky limited partnership, and all rights relating to or arising by reason of such general partner interest, and (iii) the collateral assignment by Kasgro Leasing to Transamerica Equipment Financial Services Corporation ("Transamerica") of all of Kasgro Leasing's right, title and interest in and to the Agreement. Nooter acknowledges that in the event of Kasgro Leasing's default under its agreement with Transamerica, Transamerica (or its agents or assigns) may, but is not obligated to, assume Kasgro Leasing's rights and obligations under the Agreement (provided, however, that in the absence of such assumption, Nooter agrees that Transamerica shall not be liable for any of the duties of Kasgro Leasing under the Agreement). Nooter agrees that such collateral assignment shall not give rise to any duties or obligations on the part of Transamerica to Nooter.

Nooter does hereby fully release and forever discharge OPM Services and its officers, directors, shareholders, employees, agents, successors, and affiliates from all duties, obligations, responsibilities, covenants and liabilities arising under or pursuant to the Agreement, such discharge and release to be effective immediately upon the execution and delivery of the Assignment. ~~Nooter shall indemnify and hold harmless OPM Services and its officers, directors, shareholders, employees, agents, successors and affiliates from and against all loss, liability, claims, damages or expenses (including reasonable attorney's fees) arising from any claim or matter purported to be covered pursuant to this instrument.~~

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Acknowledgment, Consent and Release as of this 14 day of September, 2000.

NOOTER/ERIKSEN, INC.

By: 

Title: DIRECTOR OF TRANSPORTATION

QBKMDM179611

ADDENDUM TO RAILROAD CAR USE AGREEMENT

The following is an addendum to an original rail car use agreement signed on February 19, 1999, between KASGRO LEASING, LLC - New Castle, PA and NOOTER ERIKSEN - St. Louis, MO.

This addendum, dated April 5, 2000, identifies the following cars as a part of the original agreement and/or any and all prior addendum, with all terms and conditions to remain as stated in the original agreement.

LNAL 70936

LNAL 70937

07/28/00 FRI 12:09 FAX 502 562 00
05/25/00 THU 08:20 FAX 502 562 200

Reed Weickamp
Reed Weickamp

0003
0002

ACKNOWLEDGMENT, CONSENT AND RELEASE

Pursuant to the terms of that certain Rail Car Use Agreement dated February 19, 1999 (the "Agreement") between Nooter/Eriksen, Inc. ("Nooter") and OPM Services, Inc. ("OPM Services"), Nooter, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, does hereby acknowledge and fully and completely authorize, approve and consent to each of the following: (i) the execution, delivery and performance by OPM Services, as assignor, and Kasgro Leasing, LLC, a Pennsylvania limited liability company ("Kasgro Leasing"), as assignee, of an Assignment and Assumption Agreement ("Assignment") pursuant to which OPM Services will sell, assign, transfer and convey to Kasgro Leasing all of its right, title and interest in and to the Agreement and Kasgro Leasing will accept, assume and agree to perform and be bound by all of the obligations, responsibilities and covenants arising thereunder, and (ii) the transfer and conveyance by OPM Flats, Inc. to Kasgro Leasing of its entire general partner interest in and to Power Flats, Ltd., a Kentucky limited partnership, and all rights relating to or arising by reason of such general partner interest.

Nooter does hereby fully release and forever discharge OPM Services and its officers, directors, shareholders, employees, agents, successors, and affiliates from all duties, obligations, responsibilities, covenants and liabilities arising under or pursuant to the Agreement, such discharge and release to be effective immediately upon the execution and delivery of the Assignment. ~~Nooter shall indemnify and hold harmless OPM Services and its officers, directors, shareholders, employees, agents, successors and affiliates from and against all loss, liability, claim, damage or expense (including reasonable attorneys fees) arising from any claim or matter purported to be related pursuant to this instrument.~~

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Acknowledgment, Consent and Release as of this 30th day of May, 2000.

NOOTER/ERIKSEN, INC.

By: 

Title: Director of Procurement
and Transportation

FAUSER\JRP\Power of Plant\Kasgro\ackmt-050500\12

JUL 28 '00 11:00

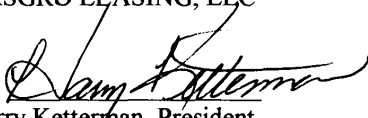
502 562 2200

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USE AGREEMENT CERTIFICATION

On this 19th day of January, 2001, I **Harry Kettermann, President** of Kasgro Leasing, LLC, formerly known as OPM Services, Inc., does hereby certify that the use agreement dated February 19, 1999, by and between Nooter Eriksen, Inc, and OPM Services, Inc., now known as Kasgro Leasing LLC., are true and accurate copies.

KASGRO LEASING, LLC

By: 
Harry Kettermann, President

STATE OF Indiana)
COUNTY OF Harrison) ss:

On this 19 day of January, 2001, before me personally appeared **Harry Kettermann** to me personally known, who, being duly sworn, did say that he is President of Kasgro Leasing, LLC, formerly known as OPM Services, Inc., and that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that execution of the foregoing instrument was the free act and deed of such corporation.

NOTARY PUBLIC: 

MY COMMISSION EXPIRES: 5/23/08